

## **GROUND RULES**

This proceeding shall be conducted in accordance with the provisions of G.L. c. 30A and 220 C.M.R. §§ 1.00 et seq., the Procedural Rules of the Department. In addition, the following ground rules shall apply to the conduct of the proceedings in this matter:

- **Information Requests**

Information requests are pre-hearing discovery in the nature of interrogatories and requests for documents (Mass. R. Civ. P. 33, 34).

Responses to information requests will not be part of the record unless marked and admitted into evidence.

Parties shall make a good faith effort to provide responses to information requests within 10 calendar days of receipt of the request, unless otherwise indicated. Where the computed response date is a Saturday, Sunday, or legal holiday, the response shall be due on the next following Department business day. This time for responses to information requests shall not apply where the established procedural schedule sets a different time. The parties must first attempt resolution of any discovery dispute before coming to the Department for assistance.

For purposes of discovery, a document shall be deemed to include writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which data can be obtained, or translated, if necessary, by the respondent through detection devices into reasonably usable form.

## 2. Exchange of Materials

The parties shall make arrangements for the expeditious exchange of materials, particularly discovery material, through the use of hand delivery, facsimile transmission, email, or other speedy means of delivery. Unless otherwise not feasible, the use of mail delivery should be avoided in the exchange of discovery material. Where material is delivered by means of FAX or email, a follow-up copy of the material must be otherwise delivered (use of mail delivery may be appropriate).

## 3. Record Requests

Responses to record requests are written substitutes to oral answers where fault of memory or complexity of subject precludes a responsive answer by the witness in the hearing. As such, they are part of the record and the evidence, unless challenged as unresponsive and expunged in whole or part. Record requests shall not be used as a substitute for discovery or as a substitute for re-direct examination.

The ordinary time for response will be the fifth Department working day following the day on which the request is made.

Objections to record requests shall be made at the time the request is made, and in no event later than the end of the next Department working day.

## 4. Protected Material

Where information or material is sought that is considered proprietary or protected by one party, the parties should discuss the use of a non-disclosure agreement before coming to the Department for protection or compelled submission.

The Department will make a reasonable effort to extend protection where appropriate within the requirements of the law and in consideration of the policy interests regarding public access. A party requesting proprietary treatment must submit its request in writing and state the reasons therefore. The party seeking such treatment has the burden to demonstrate that the materials should be afforded the treatment requested in light of the presumption that such information is a public record.

## 5. Format of Document Filings

All discovery and record request documents filed with the Department and all documents offered as exhibits shall be accurately punched to fit a standard three-hole binder. All documents shall be accompanied by a cover letter describing the filing and noting the distribution of copies.

Responses to information and record requests shall contain the following information: (1) set and question number; (2) recitation of request; and (3) identity of person who will support the response.

All written pleadings or comments must also be submitted to the Department in electronic format using one of the following methods: (1) by email attachment; or (2) on a 3.5" floppy diskette, IBM-compatible format. The Department's electronic filing address is [dte.efiling@state.ma.us](mailto:dte.efiling@state.ma.us). The text of the email or the diskette label must specify: (1) an easily identifiable case caption; (2) docket number; (3) name of the person or company submitting the filing; (4) a brief descriptive title of the document (e.g., comments or petition to intervene). The electronic filing should also include the name, title, and phone number of a person to contact in the event of questions about the

filing. Text responses should be in either WordPerfect (naming the document with a ".wpd" suffix) or in Microsoft Word (naming the document with a ".doc" suffix). Data or spreadsheet responses should be compatible with Microsoft Excel. Documents submitted in electronic format will be posted on the Department's website, <http://www.state.ma.us/dpu/>.

## 6. Offering of Exhibits

The proponent of an exhibit must offer the Department six bench copies of the proposed exhibit (standard three-hole punch). Nonconforming documents will not be marked. Where material exceeding 25 pages is offered for marking and such material is already in the possession of all parties (e.g., information request responses), the proponent may, no later than 9:00 a.m. on the day the material is to be offered for marking, inform all parties and the Department's Telecommunications Division of the intended use of such material. Nonetheless, the proponent of any such document must provide the Hearing Office with a punched copy for marking.

If only a part of a document is offered for marking and another party wishes to use the omitted part(s) in questioning or on brief, then that party must enter the missing part(s) into the record.

Before the close of hearings, each party that offers exhibits shall submit a listing for those exhibits that presents (1) the exhibit number and (2) a description of the exhibit.

## 7. Late Filed Exhibits

Exhibits offered after the close of the hearings, if objected to by any party, labor under a heavy burden of untimeliness, for they would not be subject to cross-examination or rebuttal. Late filed exhibits must be accompanied by a motion to reopen the record and supported by appropriate affidavits. Only for good cause shown, in the face of an objection, will such exhibits be marked and admitted into evidence.

## 8. Exhibit Format

Any exhibit offered in this proceeding must contain an internally consistent and usable form of referencing. While most documents that are offered as exhibits have pre-numbered pages, some offered exhibits (especially those exhibits consisting of excerpts from more than one document or consisting of a compilation of notes) have pages that are not numbered or are not consistently numbered.

Documents of three pages or more without a pre-existing referencing system must be marked with consecutive page numbers before the document is offered as an exhibit or before it is otherwise distributed for use in the hearing. Where it is necessary to supply page numbers for an exhibit, the proponent of the exhibit should add the numbers in some way that differentiates the additions from the preexisting text and should identify his method of addition on the record upon presentation for marking.

Documents without an acceptable referencing system will not be marked for identification and may not be used at the hearing.

## 9. Number of Copies

The Department requires copies to be filed in the following

numbers:

Information Requests and Responses, Responses to Record Requests, Pleadings, Briefs, Motions, and Memoranda - 1 original and 8 copies (to be distributed as follows: 2 copies shall be submitted to Paula Foley, Hearing Officer, and 1 copy shall be submitted to each of the following: Paul Vasington, Commissioner; Mike Isenberg, Director, Telecommunications Division; Bill Agee, Assistant General Counsel; April Mulqueen, Assistant Director, Telecommunications Division; Jan McCoy, Telecommunications Analyst; and Candice Allgaier, Telecommunications Analyst).

Bulk Responses (100 pages or more) - 1 original and 2 copies

#### 10. Address of Filings

The original of all filings must be filed with Mary Cottrell, Secretary of the Department, Department of Telecommunications and Energy, One South Station, Second Floor, Boston, Massachusetts 02110. Where 2 copies of a filing are required under these ground rules, both copies must be submitted to Paula Foley, Hearing Officer. All other Department personnel listed above shall each receive one copy. In addition, the Hearing Officer requests that she be provided with one copy of all cases and orders issued by non-Department state agencies, including out-of-state agencies cited in a filing.

#### 11. Communications Between the Parties

Where information requests are sent to a party by means of FAX (see ground rule number 2), the FAX must be accompanied by telephone notification of the

transmission. Failure to make prompt telephone notification may affect the timing of the response to the information request.

## 12. Hearing Arrangements

Evidentiary hearings will be conducted at the offices of the Department at One South Station, Boston, Massachusetts. These hearings will begin each day at 10:00 a.m., according to a schedule to be established at a later date. Adjustments to the stated hearing arrangements may be made at the discretion of the Hearing Officer.

These ground rules are deemed consistent with the orderly conduct of this proceeding. Exceptions to any ground rule may be made by the Hearing Officer for good cause shown.

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Date Paula Foley, Hearing Officer